

DILLINGHAM & MURPHY, LLP
 PATRICK J. HAGAN (STATE BAR NO. 68264)
 MARK J. ROGERS (SBN 173005)
 J. CROSS CREASON (SBN 209492)
 225 Bush Street, 6th Floor
 San Francisco, California 94104-4207
 Telephone: (415) 397-2700
 Facsimile: (415) 397-3300

Attorneys for Defendant and Cross-Complainant
 Z-MAN FISHING PRODUCTS, INC.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

APPLIED ELASTOMERICS,
 INCORPORATED, a California corporation

Plaintiff,

v.

Z-MAN FISHING PRODUCTS,
 INCORPORATED, a South Carolina
 corporation

Defendant.

AND RELATED COUNTERCLAIMS

Case No. C 06 2469 CW

STIPULATION REGARDING BRIEFING
 SCHEDULE ORDER

Honorable Claudia Wilken

Trial Date: November 13, 2007

Plaintiff and Counter-Defendant Applied Elastomerics, Incorporated (“AEI”) and
 Defendant and Counter-Complainant Z-Man Fishing Products, Incorporated (“Z-Man”), through
 their respective attorneys and pursuant to the Court’s Local Rule 6-2, hereby stipulate as follows:

Whereas the Court entered its Order dismissing nine of Z-Man’s counterclaims on
 November 8, 2006.

Whereas Z-Man filed its First Amended Counter-Complaint on November 22, 2006.

Whereas the parties participated in private mediation on November 30, 2006, but did not
 settle the case.

Whereas during the Case Management Conference the Court authorized the parties to

1 stipulate to a briefing schedule for AEI's motion to dismiss Z-Man's amended counterclaims
2 and/or motion for judgment on the pleadings.

3 Whereas the parties' counsel met and conferred and agreed to a briefing schedule.

4 Whereas on December 7, 2006, the parties stipulated that the hearing date for AEI's
5 motion in response to Z-Man's First Amended Complaint and motion for judgment on the
6 pleadings or motion for partial summary judgment concerning the payment of minimum royalties
7 authorized by the Court during the Case Management Conference would be February 2, 2007.

8 Whereas the parties' counsel thereafter met and conferred concerning the substance of Z-
9 Man amended counterclaims, and Z-Man agreed to voluntarily drop its counterclaims for fraud,
10 negligent misrepresentation, and rescission.

11 Whereas Z-Man cannot voluntarily dismiss those counterclaims and the proper procedure
12 to effectuate their dismissal is to amend its First Amended Counter-Complaint to drop them (see
13 Ethridge v. Harbore House Restaurant (9th Cir. 1988) 861 F.2d 1389, 1392).

14 Whereas the parties' counsel are still in the process of meeting and conferring concerning
15 the substance of a stipulation that could avoid the need for AEI to file a judgment on the pleadings
16 relating to the issue of the payment of minimum royalties.

17 Whereas the previous time modifications in this case include the following: 1) On April
18 27, 2006, the parties stipulated to provide Z-Man with an additional 20 days within which to
19 respond to AEI's Complaint. 2) On September 28, 2006, pursuant to Z-Man's request, the parties
20 stipulated that the hearing date for the parties' pending motions (Z-Man's transfer motion and
21 AEI's motion to dismiss counterclaims) and the date of the parties' Case Management Conference
22 be rescheduled from October 20, 2006 to November 3, 2006. 3) On December 7, 2006, the parties
23 stipulated that the hearing date for AEI's motion in response to Z-Man's First Amended
24 Complaint and motion for judgment on the pleadings or motion for partial summary judgment
25 concerning the payment of minimum royalties authorized by the Court during the Case
26 Management Conference would be February 2, 2007.

27 Whereas this stipulation will not have any affect on the schedule for the case.

28 IT IS HEREBY STIPULATED between AEI and Z-Man as follows:

1 1) Z-Man shall be permitted to file the Second Amended Counter-Complaint attached
 2 hereto as Exhibit A. AEI will have until January 5, 2007 to answer or otherwise respond to the
 3 Second Amended Counter-Complaint. (A motion to dismiss any portion of the Second Amended
 4 Counter-Complaint will obviate the need for AEI to file an answer to the Second Amended
 5 Counter-Complaint until after the motion is decided.) January 5, 2007 also is the deadline for
 6 filing the motion for judgment on the pleadings or motion for partial summary judgment
 7 concerning the payment of minimum royalties authorized by the Court during the Case
 8 Management Conference.

9 2) Z-Man's opposition to any motion filed on January 5, 2007 will be due on January
 10 19, 2007.

11 3) AEI's reply brief in support of any motion filed on January 5, 2007 is due on
 12 January 26, 2007.

13 4) The hearing on any motion filed by AEI on January 5, 2007 will take place on
 14 February 16, 2007 at 10:00 a.m.

15 It is further stipulated that any and all motions filed by AEI on January 5, 2007 will be
 16 included in a single brief, subject to the page limits set forth the Northern District Local Rules.
 17 Similarly, Z-Man will file a single opposition brief and AEI will file a single reply brief, each of
 18 which will be subject to the page limits set forth in the Northern District Local Rules.

19 Dated: December 19, 2006

MORRISON & FOERSTER, LLP

21 By: /S/ JILL NEIMAN
 22 JILL NEIMAN
 23 Attorneys for Plaintiff and Counter-Defendant
 Applied Elastomerics, Inc.

24 Dated: December 19, 2006

DILLINGHAM & MURPHY

26 By: /S/ MARK ROGERS
 27 MARK J. ROGERS
 28 Attorneys for Defendant and Counter-Complainant
 Z-Man Fishing Products, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.
12/22/06

Dated: _____

A handwritten signature in blue ink, appearing to read 'Claudia Wilken', with a long horizontal flourish extending to the right.

HONORABLE CLAUDIA WILKEN